

**SUMTER COUNTY BOARD OF COMMISSIONERS  
EXECUTIVE SUMMARY**

**SUBJECT:** Florida Association of Counties Trust (FACT) General Liability Insurance Contract  
(Staff recommends approval).

**REQUESTED ACTION:** Approve FACT General Liability insurance contract

☐ Work Session (Report Only)

☒ Regular Meeting

**DATE OF MEETING:** 11/13/2012

☐ Special Meeting

**CONTRACT:** ☒ N/A

Vendor/Entity: Florida Association of  
Counties Trust

Effective Date: 10/1/2012

Termination Date: 9/30/2013

Managing Division / Dept:

Financial Services

**BUDGET IMPACT:** \$128,138

☒ Annual

**FUNDING SOURCE:**

General Fund and County Transportation  
Trust Fund

☐ Capital

**EXPENDITURE ACCOUNT:**

001-413-519-4502 Insurance \$85,430  
103-340-541-4500 Insurance \$42,708

☐ N/A

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**HISTORY/FACTS/ISSUES:**

The Florida Association of Counties Trust has submitted the contract agreement (attached) for FY2012-2013.

In summary, the contract provides the following:

A. Public Agency Multi-Class Liability

1. Bodily Injury Liability
2. Property Damage Liability
3. Personal Injury and Advertising Injury Liability
4. Errors or Omissions Liability
5. Civil Rights Liability

B. Designated Wrongful Employment Practices Liability

C. Employee Benefits Errors or Omissions Liability

FACT has been an outstanding partner with Sumter County for several years and continues to provide excellent coverage at a reasonable cost. The Florida League of Cities in partnership with FACT has provided the attached E-Verify Certification.

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**LIABILITY AGREEMENT  
2012-2013**



**F**lorida **A**ssociation of **C**ounties **T**rust



## FLORIDA ASSOCIATION OF COUNTIES TRUST

October 1, 2012

### **RE: Renewal Agreement 2012/2013 Coverage Year**

Dear FACT Member,

Thank you for electing to renew with FACT for the 2012-2013 coverage year.

Enclosed with this letter, you will find your FACT Renewal Agreement. Please take the time to review the document in detail and do not hesitate on contacting us directly if you have any questions or concerns.

As you have previously been notified, effective October 1, 2012 FACT's new service company will be the Florida League of Cities ("FLC"). Over the past 35 years, FLC has been effectively administering claims and providing exceptional risk management services. The Board of Directors and the FLC team is excited about this new partnership and look forward to the opportunity to provide you continued superior service and support through the FACT program.

If you have any question with regards to your policy or services please feel free to go to the new FACT Risk Management web site at [www.FACT-Insurance.com](http://www.FACT-Insurance.com) or contact the following FACT Team members directly:

Underwriting Questions: Nanny Tinn (407) 367-1796 E-Mail: [ntinn@flcities.com](mailto:ntinn@flcities.com)

Claims Questions: Alonzo Hatchette (407) 367-1767 E-mail: [ahatchette@flcities.com](mailto:ahatchette@flcities.com)

Service/Training: Ken Moneghan (727) 403-1001 E-mail: [kenm654@cs.com](mailto:kenm654@cs.com)

Again, thank you for your continued commitment to FACT. We look forward to closely working with you for not only this coverage year but for many more years to come.

Sincerely,

Alonzo Hatchette  
FACT Coordinator for Florida League of Cities

Enclosure

## **FLORIDA ASSOCIATION OF COUNTIES TRUST**

### **TRUST MEMBER AGREEMENT**

The Florida Association of Counties Trust (Trust) is comprised of various members, all of which are Florida public entities or agencies as provided in the Agreement and Declaration of Trust creating the Trust, that have organized to pool their liabilities pursuant to Florida law.

THIS AGREEMENT is made and entered into by and between the Trust, acting by and through its governing Board of Trustees (Board), and any Florida public agency or entity that is now or may hereafter become a member of the Florida Association of Counties Trust. Such trust member shall be referenced in this Agreement as the Member and shall be that party identified as the Designated Member or Member in the declarations page and any coverage agreement issued by the Trust.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises and obligations herein contained, which are given to and accepted by each member hereof to the other, the Trust and Member agree as set forth below.

### **MEMBER RESPONSIBILITIES**

Each Member of the Trust agrees to abide by the following rules and regulations:

#### **GENERAL CONDITIONS**

1. The Member agrees the Board of Trustees, the governing body of the Trust, comprised entirely of local government officials, will set up, operate and enforce its own administrative rules, regulations and by-laws as between the individual members of the Trust and shall otherwise direct the affairs of the Trust.
2. The Member and the Trust agree that the Board may admit as members of this Trust only those governmental entities in the state of Florida who have common governmental interest and who are deemed acceptable by the Board. The Board or its designee shall be the sole judge of whether an applicant shall be admitted to membership or not.
3. The Member agrees to maintain a reasonable loss prevention program in order to provide the maximum in safety and lawful practices as such may relate to the potential liability assumed by the Trust under this Agreement or any other agreement, certificate, document, or other instrument executed by the Trust and the Member pursuant to this Agreement.
4. In the event of an occurrence likely to give rise to a claim within the scope of this Agreement, or any other agreement, certificate, document or other instrument executed by the Trust and the Member pursuant to this Agreement, the Member agrees to provide immediate notification of such occurrence to the Trust.
5. The Member agrees to promptly make all contributions for coverages arising under this Agreement, or any other agreement, certificate, document, or other instrument executed by the Trust and the Member pursuant to this Agreement, at the time and in the manner directed by the Board. Said contributions may be reduced by any discount, participation credit, or other contribution reduction program authorized by the Board.
6. Required Member contributions shall be in addition to the deductible amount, if any, as set forth in the declarations to the Coverage Agreement. Where such deductible amount is required, coverages arising under this Agreement shall be in excess of such deductible. The Trust may pay on behalf of the Member all or any portion of the deductible amount and upon notification by the Trust of such payment, the Member shall promptly reimburse the Trust for any portion of the deductible the Trust has paid.

7. The Member agrees in the event of payment of any loss by the Trust on behalf of the Member, the Trust shall be subrogated to the extent of such payment to all the rights of the Member against any party or other entity legally responsible for damages resulting from said loss, and in such event, the Member hereby agrees, on behalf of itself, its officers, employees, and agents to execute and deliver such instruments and papers as is required, to cooperate with and otherwise assist the Trust as may be necessary to effect any recovery sought by the Trust pursuant to such subrogated rights, to do whatever else is reasonably necessary to secure such right to the Trust, and to do nothing that will impair the rights of the Trust herein described.
8. The Member agrees the Trust, its service company, the Florida League of Cities, Inc., and any of their other agents, servants, employees or attorneys, shall be permitted at all reasonable times and upon reasonable notice to inspect the property, work places, plants, works, machinery, appliances or other facilities covered pursuant to this Agreement or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement. Further, the Member agrees the Trust shall be permitted at all reasonable times while the Member participates in the Trust, to examine the Member's books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify any loss that may be paid or may have been paid by the Trust on behalf of the Member pursuant to this Agreement, or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement, or which show or verify the accuracy of any contribution which is paid or payable by the Member pursuant to the terms of this Agreement, or any other agreement, certification, document or any other instrument executed by the Trust and the Member pursuant to this Agreement.
9. The Member hereby delegates to the Trust the responsibility to contract for handling the administrative and servicing functions of the Trust. The Board may pay a reasonable fee for such servicing functions, which shall be negotiated from time to time by the Board of Trustees. These fees shall be in consideration of all services and expenses contracted for with the Trust, which services or expenses may include the collecting, disbursing, accounting for monies collected, counseling with members as to the claims handling and investigations, legal services, actuarial services, accounting services and for the purpose of providing for excess insurance or reinsurance coverage. Books and records of all contractors employed by the Trust are to be open for inspection by the Board of Trustees or their agents, as permitted by Florida law.
10. The Member and the Trust agree the service company shall deposit to the account of the Trust, at any bank or banks authorized by the Board, all contributions or other monies, as and when collected and said monies shall be disbursed only as provided by (1) the Trust's Agreement and Declaration of Trust; (2) any rules, regulations and by-laws of the Board; and (3) agreements between the Board and the service company.
11. The Member agrees the liability of the Trust is specifically limited to the discharge of the liability of its members assumed pursuant to this Agreement or any other agreement, certificate, document, or any other instrument executed by the Member and the Trust pursuant to this Agreement.
12. The Member agrees the coverage obligation of the Trust pursuant to this Agreement or any other agreement, certificate, document, or any other instrument executed by the Member shall not apply to punitive or exemplary damages.
13. The Trust shall operate on a fiscal year from 12:00 a.m. October 1<sup>st</sup> to 11:59 p.m. September 30<sup>th</sup> of the succeeding year. Application for continuing membership, when approved in writing by the Board or its designee, shall constitute a continuing contract for each succeeding fiscal period unless cancelled by the Board or unless the Member shall have resigned or withdrawn from said Trust by written notice, pursuant to the Agreement and Declaration of Trust creating the Trust.
14. Unless the Trust and the Member otherwise expressly agree in writing, the Member agrees coverage by the Trust for a Member under the terms of this Agreement or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement, shall expire automatically at 11:59 p.m. on the last day of September of each calendar year.

15. Except as otherwise provided herein, the Member and the Trust agree such Member's coverage may be canceled by the Trust or the Member at any time upon no less than forty-five (45) days prior written notice by the Board of Trustees or the service company to the Member, or by the Member to the Trust's service company, stating the date such cancellation shall be effective. However, cancellation by the Member after the initial effective date of coverage may be other than pro-rata; or the Trust may cancel for non-payment of premium by issuing written notice of cancellation to the Member at least ten (10) days before the effective date of cancellation.

The notice will be mailed or delivered to the Member's last known address. If notice is mailed, proof of such mailing will be sufficient evidence of notice as of the date of the postmark.

16. The Member agrees excess monies remaining after the payment of claims and claim expenses, and after provision has been made for the payment of open claims and outstanding reserves, may be distributed by the Board of Trustees to the members participating in the Trust in such manner as provided in the Agreement and Declaration of Trust creating the Florida Association of Counties Trust.
17. The Member agrees there will be no disbursements out of the Extraordinary Loss Reserve Account established by the Trust by way of dividends or distributions of accumulated reserves to members until provision has been made for all obligations against the Trust and to the extent permitted by the discretion of the Board as provided in the Agreement and Declaration of Trust creating the Trust.
18. The Member agrees to permit qualified service providers, including the attorney(s) selected by the Trust, to defend, investigate, settle, and otherwise process and dispose of all claims, suits, allegations or demands that may result in liability assumed by the Trust on behalf of the Member pursuant to this Agreement, or any other agreement, certificate, document, or other instrument executed by the Trust or the Member pursuant to this Agreement, notwithstanding the following rights which the Trust agrees the Member shall retain:
- a. The Member may, in its discretion and solely at its own expense, retain counsel (other than the attorney(s) provided pursuant to 19. below) to represent the Member against any claim, suit, allegations or demands. The Trust shall have no obligation to cover the cost of such retained counsel or any related expenses.
  - b. If the Member's limit of liability is exhausted and the Trust or its agent has not notified the Member of such exhaustion at least thirty (30) days prior, then the Trust shall continue providing the defense previously undertaken by the attorney(s) appointed by the Trust pursuant to 19. below for a reasonable period of time, not to exceed thirty (30) days, during which time the Member shall acquire control of the claims, suits, allegations or demands remaining at issue. However, the Member shall reimburse the Trust for any related expenses incurred during the transfer of the matter from the Trust-appointed attorney(s) to the attorney(s) chosen by the Member following exhaustion of Member's limit of liability.
19. The Member and the Trust agree that the Trust is to defend in the name of and on behalf of the Member any claims, suits or other legal proceedings which may at any time be instituted against the Member on account of any liability for monetary damages, to the extent such defense and liability has been assumed by the Trust pursuant to an obligation to defend that arises under this Agreement or any other agreement, certificate, documents, or other instrument executed by the Trust and the Member pursuant to this Agreement, subject to any and all of the definitions, terms, conditions and exclusions contained in said agreements, certificates, documents or other instruments. Further the Member agrees:
- a. For any occurrence resulting in a claim or suit for damages under this Agreement, the Trust, in its sole discretion, may investigate; settle; coordinate the defense of claims or counts within suits which may not be expressly covered by this Agreement but which provide strategic benefits through coordinated litigation; and/or use of any other reasonable means permitted by applicable rules of state law and attorney professional conduct, without the prior consent or approval of the Member.



- b. The Trust shall have no obligation to retain more than one attorney to defend all members involved in any single occurrence resulting in a claim or suit for damages covered by this Agreement.
- c. The Trust shall remain in control of the defense for any occurrence resulting in a claim or suit for damages for which the Trust is obligated to provide a defense or elects to provide a defense to the Member, whether covered or not covered by this Agreement, notwithstanding any of the following:
  - i. There is more than one defendant against whom a claim or suit is brought;
  - ii. There is any real or perceived conflict between or among the trust, any Member or any defendant(s) involved in any claim or suit;
  - iii. The Trust has reserved its rights to deny or limit its coverage in any claim or suit;
  - iv. The Trust or the Member initiates any claim or suit against any other Trust member.
- 20. In the event any court of competent jurisdiction orders the Trust to provide attorney representation beyond the attorneys the Trust selects and retains pursuant to 19. above, the Member shall be entitled to the fees and charges for such attorney representation only to the extent of usual and customary legal fees and charges paid by the Trust for reasonably similar representation.
- 21. The Member shall make prompt payment of all contributions as required by the Board. The Member shall fully cooperate with the service company and/or auditors of the Trust to promptly determine final audited contributions. Any disputes concerning contributions shall be resolved after payment. Any objections concerning the final audited contribution shall be filed within sixty (60) days of billing of the final audited contributions. After that time, the audit shall be considered to be final.
- 22. The Member agrees to pay reasonable penalties as determined by the Board of Trustees for late payment of contributions required under this Agreement, or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement.
- 23. The Member, through the Board of Trustees, does hereby appoint the Florida League of Cities, Inc. for the Trust as its agent and attorney-in-fact, to act in its behalf and to execute all necessary contracts, reports, waivers, agreements, excess insurance contracts, service contracts, and other documents reasonably necessary to accomplish the purposes and to fulfill the responsibilities of the Trust; to make or arrange for the payment of claims, claim expenses, medical expenses, and all other matters required or necessary insofar as they affect the Member's liability under federal or Florida law and insofar as such matters are covered pursuant to the terms of this Agreement or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement.
- 24. The Trust shall determine all questions of the scope of liability coverage, membership eligibility, methods of providing or arranging for benefits, and all other related matters. It shall have full power to construe the provisions of this Agreement and the other program documents. Any such determination and any such construction adopted by the Trust in good faith shall be binding upon all parties hereto and the members, provided such determination or such construction is consistent with state or federal law.
- 25. The Member agrees to abide by all the terms and conditions of this Agreement, the Participation Agreement, the Trust's By-laws, the rules and regulations now in existence or hereafter promulgated by the Board, and any other agreement, certificate, document, or other instrument executed by the Trust and the Member pursuant to the Agreement.
- 26. The Member and the Trust agree the Trust will maintain an excess coverage program and reserve evaluation to protect the financial stability of the Trust in an amount and manner determined by a qualified and independent actuary.

27. The Member and the Trust agree the Trust will submit to the appropriate governmental agency, when required by law, annual fiscal year-end audited financial statements prepared by an independent certified public accountant.
28. The Member and the Trust agree that any Florida public entity or agency that formally applies for membership in this Trust and is accepted by the Board of Trustees shall thereupon become a party to the Trust's Agreement and Declaration of Trust and be bound by all of the terms and conditions contained therein, and said application shall constitute a counterpart of said Agreement and Declaration of Trust.
29. Members duties after loss:

In the event of an occurrence for which there is reasonable belief that a claim or suit for damages will arise, the Member shall act in accordance with the following, and all references to the Trust shall also include, by reference, the Trust's Service Company:

- a. Give the Trust prompt written notice of any accident, occurrence or potential claim along with all relevant information concerning the claim. The Member shall have a continuing duty to provide to the Trust all relevant information promptly as the Member becomes aware of such information; and
- b. Cooperate fully with the Trust in defense or settlement of claims or opposition to claims bills, and in the enforcement of any right of contribution or indemnity; and
- c. Forward to the Trust every notice, demand, summons or other process served upon the Member relating to any occurrence, and take no further action concerning the occurrence without the approval of the Trust or the service company; and
- d. Take reasonable steps to prevent additional or cumulative bodily injury, personal injury or property damage from or arising out of the same or similar conditions or circumstances; and
- e. Not engage in settlement negotiations as to any claim or suit, and the Trust shall have no obligation to pay the amount of any settlement negotiated or agreed upon by a Member without prior written approval by the Trust or the service company; and
- f. Agree to take all reasonable actions, where appropriate, which shall facilitate settlement of claims; and
- g. Agree to responsible counsel selected by the Trust to defend the claim and agree not to use the Member's counsel in defense of said action, except where expressly provided otherwise under this Agreement or where expressly authorized by the Trust; and
- h. Keep all bills, receipts and related documents that establish the amount of loss; and
- i. Furnish a complete inventory of the loss, damaged and destroyed property, showing in detail the quantity and amount of loss claimed under the valuation provision of the Coverage Agreement; and
- j. Where applicable, promptly separate any damaged property from the undamaged property, and keep it in the best possible order for examination; and
- k. Take all reasonable steps to protect the covered property from further damage; and
- l. Give notice of such loss to the proper authorities if the loss may be due to a violation of the law; and



m. In the event of an occurrence resulting in any loss to an automobile covered by this Agreement, Member duties include the following:

- i. Notify law enforcement in the event any theft has occurred;
- ii. Take reasonable measures to protect the automobile from further harm or damage and document all expense incurred;
- iii. Allow the Trust reasonable access to the automobile for inspection and documentation of the loss;
- iv. Submit to an Examination Under Oath at the Trust's request, including a sworn statement attesting to the truth of all answers provided.

30. Transfer of Member's rights and duties under this Agreement.

Your rights and duties under this Agreement may not be transferred without written consent of the Trust. This applies to all coverages under this Agreement or any that may be added after the effective date of this Agreement.

Should your rights and duties be transferred to a legal representative, they may act only within their scope of duties with regard to this Agreement. Until your legal representative is appointed, anyone with proper temporary custody of your property will have your rights and duties but only with respect to that property.

31. Premiums.

- a. The Trust shall compute all contributions due from the Member (the Florida public agency named in this Trust Member Agreement and as named in the declarations to the coverage Agreement) and in accordance with policies and procedures it authorizes, which it may amend from time to time;
- b. The contributions required of the Member at the inception of coverage for any coverage year shall be deemed a "deposit premium" only. At the conclusion of every coverage year, the Trust is authorized to compute or audit the extent of coverage actually realized by the Member, deemed the "earned premium."
- c. If the deposit premium exceeds the earned premium, the Trust shall return the excess amount to the Member in a reasonable amount of time following the conclusion of the premium audit period. If the deposit premium is less than the earned premium, the Member shall owe the deficit amount to the Trust and shall remit same in accordance with the billing instructions provided along with notice of such deficit.
- d. The Member agrees that its failure to maintain all records, data, materials and/or any other evidence reasonably required for the Trust to compute or perform its audit of premiums shall authorize the Trust to utilize all reasonably available means to determine the earned premium and declare the amount of deficit or excess premium arising in any coverage year.

32. When a Claim is Considered Made:

For any occurrence resulting in a claim or suit for which coverage is sought under this Agreement, a claim shall be deemed to have been made upon the happening of one or more of the following:

- a. The first written notice of a "suit" is received by any Member from any person or entity advising that such person or entity intends to hold the Member responsible for covered damages caused by or resulting from the Member's action or inaction;
- b. The first written notice that any judicial, administrative or arbitration proceeding has been initiated against any Member that seeks to hold any Member responsible for covered damages

cause by or resulting from the Member's action or inaction; or

- c. The Trust reaches a legally binding settlement agreement with any person seeking damages that are alleged to be the result of the Member's action or inaction, and prior to any of the circumstances described in 32.a. or 32.b. above.

33. Actions challenging Trust's discretionary authority under the Agreement and Declaration of Trust:

- a. The Member agrees that in the event of any dispute against the Trust or any Board of Trustees member(s) that challenges the authority of the Trust to resolve all questions of coverage, membership eligibility, methods of providing or arranging for coverage benefits and all other matters relating to this pooled governmental self-insurance program, in which a court of competent jurisdiction enters a final, non-appealable order limiting the discretion of the Board of Trustees to determine such matters as provided for the Agreement and Declaration of Trust creating Florida Association of Counties Trust, the parties agree any related and unresolved issue remaining after such discretion-limiting order has been rendered shall be decided by neutral binding arbitration by the National Arbitration Forum, in accordance with their Code of Procedure then in effect. However, prior to commencement of any arbitration, the Member agrees to submit to non-binding mediation.
- b. In the event the parties cannot agree upon a mediator for the non-binding mediation required herein, at the request of either party, a mediator shall be chosen by the American Arbitration Association, in accordance with its rules. The parties shall equally share the costs of mediation. Once mediated, a party may not demand mediation of the same facts for which an arbitration demand has been made regarding previously-mediated facts.
- c. In the event a dispute requires resolution through arbitration, the arbitration shall take place in Orange County, Orlando Florida.
- d. These arbitration procedures shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §§ 1-16. The Florida Arbitration Code, §682.01, Florida Statutes, shall not apply to this arbitration provision.
- e. In the absence of a resolution of any dispute which the FACT Board of Trustees was precluded from reaching by operation of court order, the parties hereby represent and affirm that they willingly forego their right to litigate any such dispute in a court of law and agree that any such disputes shall be decided through the dispute resolution process described in this section.

Agreement #: FACT 9017

Designated Member: Sumter County Board of County Commissioners

AGREED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_



For the Trust

Don Lund

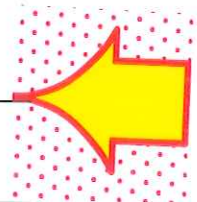
Printed Name

Associate Director of Insurance Services  
Title

For the Member

Printed Name

Title



HERE

**FLORIDA ASSOCIATION OF COUNTIES**

**DECLARATIONS**

**I. DESIGNATED MEMBER: Sumter County Board of County Commissioners**

Address: 737 Powell Road, Suite 200  
Wildwood, FL 34785-4251

**II. COVERAGE PERIOD**

From October 1, 2012 to October 1, 2013  
12:01 A.M. Standard Time at the address of the Designated Member.

**III. AGREEMENT NUMBER**

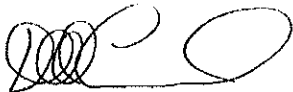
Florida Association of Counties Trust (FACT) **FACT # 9017**

**IV. COVERAGES INCLUDED**

General Liability

**V. ESTIMATED ANNUAL PREMIUM**

\$128,138



\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
October 1, 2012

\_\_\_\_\_  
Date

**FLORIDA ASSOCIATION OF COUNTIES TRUST  
GENERAL /PROFESSIONAL LIABILITY COVERAGE AGREEMENT  
DECLARATIONS**

**I. DESIGNATED MEMBER:** **Agreement No.: FACT 9017**

**Sumter County Board of County Commissioners**

**II. Government Description**  
County

**III. COVERAGE PERIOD**

From October 1, 2012 to October 1, 2013 12:01 A.M. Standard Time at the address of the Designated Member.

IV. General/Professional Liability	Deductible	Limit	Net Premium
General Liability	\$25,000	Per Occurrence General Aggregate	\$1,000,000 \$3,000,000
Errors and Omissions Liability	\$25,000	Per Occurrence General Aggregate	\$1,000,000 Included Above
Civil Rights Liability	\$25,000	Per Occurrence General Aggregate	\$1,000,000 Included Above
Employment Practices Liability	\$25,000	Per Occurrence Aggregate	\$1,000,000 \$1,000,000
Employee Benefits Program Administration Errors and Omissions Liability	\$25,000	Per Occurrence Aggregate	\$1,000,000 \$1,000,000
Fire Damage	N/A	Per Occurrence	\$50,000
			Included

**V.** This Agreement includes these endorsements and schedules: See Schedule A

**VI. ESTIMATED ANNUAL PREMIUM**

Florida Association of Counties Trust (FACT) \$128,138

THIS DECLARATIONS AND THE SUPPLEMENTAL DECLARATIONS, TOGETHER WITH THE COMMON CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED AGREEMENT.

**FACT GENERAL/PROFESSIONAL LIABILITY COVERAGES**  
Scheduled Coverage Forms List  
FACT # 9017

**Schedule A**

Form #	Description
FACT TRAG 1012	Trust Agreement
FACT GL 1012	Coverage Agreement
FACT EBL 1012	Employee Benefits Errors and Omissions Liability Endorsement
FACT EPL 1012	Wrongful Employment Practices Liability Endorsement
FACT LE 1012	Law Enforcement Liability Endorsement
FACT CLE 1012	Contingent Law Enforcement Liability Endorsement
FACT COE 1012	Constitutional Officer Endorsement
FACT DEDL 1012	Deductible Endorsement
FACT SE GL 1012	Specific Excess Endorsement – General Liability
FACT AI 1012	Additional Insured Endorsement
FACT AILE 1012	Additional Insured Endorsement–Lessor of Leased Equipment Endorsement
FACT AILR 1012	Additional Insured Endorsement–Lessors/Managers of Premises Endorsement

## **FLORIDA ASSOCIATION OF COUNTIES TRUST**

### **TRUST MEMBER AGREEMENT**

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THIS AGREEMENT is made and entered into by and between the Trust, acting by and through its governing Board of Trustees (Board), and any Florida public agency or entity that is now or may hereafter become a member of the Florida Association of Counties Trust. Such trust member shall be referenced in this Agreement as the Member and shall be that party identified as the Designated Member or Member in the declarations page and any coverage agreement issued by the Trust.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises and obligations herein contained, which are given to and accepted by each member hereof to the other, the Trust and Member agree as set forth below.

### **MEMBER RESPONSIBILITIES**

Each Member of the Trust agrees to abide by the following rules and regulations:

#### **GENERAL CONDITIONS**

1. The Member agrees the Board of Trustees, the governing body of the Trust, comprised entirely of local government officials, will set up, operate and enforce its own administrative rules, regulations and by-laws as between the individual members of the Trust and shall otherwise direct the affairs of the Trust.
2. The Member and the Trust agree that the Board may admit as members of this Trust only those governmental entities in the state of Florida who have common governmental interest and who are deemed acceptable by the Board. The Board or its designee shall be the sole judge of whether an applicant shall be admitted to membership or not.
3. The Member agrees to maintain a reasonable loss prevention program in order to provide the maximum in safety and lawful practices as such may relate to the potential liability assumed by the Trust under this Agreement or any other agreement, certificate, document, or other instrument executed by the Trust and the Member pursuant to this Agreement.
4. In the event of an occurrence likely to give rise to a claim within the scope of this Agreement, or any other agreement, certificate, document or other instrument executed by the Trust and the Member pursuant to this Agreement, the Member agrees to provide immediate notification of such occurrence to the Trust.
5. The Member agrees to promptly make all contributions for coverages arising under this Agreement, or any other agreement, certificate, document, or other instrument executed by the Trust and the Member pursuant to this Agreement, at the time and in the manner directed by the Board. Said contributions may be reduced by any discount, participation credit, or other contribution reduction program authorized by the Board.
6. Required Member contributions shall be in addition to the deductible amount, if any, as set forth in the declarations to the Coverage Agreement. Where such deductible amount is required, coverages arising under this Agreement shall be in excess of such deductible. The Trust may pay on behalf of the Member all or any portion of the deductible amount and upon notification by the Trust of such payment, the Member shall promptly reimburse the Trust for any portion of the deductible the Trust has paid.

7. The Member agrees in the event of payment of any loss by the Trust on behalf of the Member, the Trust shall be subrogated to the extent of such payment to all the rights of the Member against any party or other entity legally responsible for damages resulting from said loss, and in such event, the Member hereby agrees, on behalf of itself, its officers, employees, and agents to execute and deliver such instruments and papers as is required, to cooperate with and otherwise assist the Trust as may be necessary to effect any recovery sought by the Trust pursuant to such subrogated rights, to do whatever else is reasonably necessary to secure such right to the Trust, and to do nothing that will impair the rights of the Trust herein described.
8. The Member agrees the Trust, its service company, the Florida League of Cities, Inc., and any of their other agents, servants, employees or attorneys, shall be permitted at all reasonable times and upon reasonable notice to inspect the property, work places, plants, works, machinery, appliances or other facilities covered pursuant to this Agreement or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement. Further, the Member agrees the Trust shall be permitted at all reasonable times while the Member participates in the Trust, to examine the Member's books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify any loss that may be paid or may have been paid by the Trust on behalf of the Member pursuant to this Agreement, or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement, or which show or verify the accuracy of any contribution which is paid or payable by the Member pursuant to the terms of this Agreement, or any other agreement, certification, document or any other instrument executed by the Trust and the Member pursuant to this Agreement.
9. The Member hereby delegates to the Trust the responsibility to contract for handling the administrative and servicing functions of the Trust. The Board may pay a reasonable fee for such servicing functions, which shall be negotiated from time to time by the Board of Trustees. These fees shall be in consideration of all services and expenses contracted for with the Trust, which services or expenses may include the collecting, disbursing, accounting for monies collected, counseling with members as to the claims handling and investigations, legal services, actuarial services, accounting services and for the purpose of providing for excess insurance or reinsurance coverage. Books and records of all contractors employed by the Trust are to be open for inspection by the Board of Trustees or their agents, as permitted by Florida law.
10. The Member and the Trust agree the service company shall deposit to the account of the Trust, at any bank or banks authorized by the Board, all contributions or other monies, as and when collected and said monies shall be disbursed only as provided by (1) the Trust's Agreement and Declaration of Trust; (2) any rules, regulations and by-laws of the Board; and (3) agreements between the Board and the service company.
11. The Member agrees the liability of the Trust is specifically limited to the discharge of the liability of its members assumed pursuant to this Agreement or any other agreement, certificate, document, or any other instrument executed by the Member and the Trust pursuant to this Agreement.
12. The Member agrees the coverage obligation of the Trust pursuant to this Agreement or any other agreement, certificate, document, or any other instrument executed by the Member shall not apply to punitive or exemplary damages.
13. The Trust shall operate on a fiscal year from 12:00 a.m. October 1<sup>st</sup> to 11:59 p.m. September 30<sup>th</sup> of the succeeding year. Application for continuing membership, when approved in writing by the Board or its designee, shall constitute a continuing contract for each succeeding fiscal period unless cancelled by the Board or unless the Member shall have resigned or withdrawn from said Trust by written notice, pursuant to the Agreement and Declaration of Trust creating the Trust.
14. Unless the Trust and the Member otherwise expressly agree in writing, the Member agrees coverage by the Trust for a Member under the terms of this Agreement or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement, shall expire automatically at 11:59 p.m. on the last day of September of each calendar year.



15. Except as otherwise provided herein, the Member and the Trust agree such Member's coverage may be canceled by the Trust or the Member at any time upon no less than forty-five (45) days prior written notice by the Board of Trustees or the service company to the Member, or by the Member to the Trust's service company, stating the date such cancellation shall be effective. However, cancellation by the Member after the initial effective date of coverage may be other than pro-rata; or the Trust may cancel for non-payment of premium by issuing written notice of cancellation to the Member at least ten (10) days before the effective date of cancellation.

The notice will be mailed or delivered to the Member's last known address. If notice is mailed, proof of such mailing will be sufficient evidence of notice as of the date of the postmark.

16. The Member agrees excess monies remaining after the payment of claims and claim expenses, and after provision has been made for the payment of open claims and outstanding reserves, may be distributed by the Board of Trustees to the members participating in the Trust in such manner as provided in the Agreement and Declaration of Trust creating the Florida Association of Counties Trust.
17. The Member agrees there will be no disbursements out of the Extraordinary Loss Reserve Account established by the Trust by way of dividends or distributions of accumulated reserves to members until provision has been made for all obligations against the Trust and to the extent permitted by the discretion of the Board as provided in the Agreement and Declaration of Trust creating the Trust.
18. The Member agrees to permit qualified service providers, including the attorney(s) selected by the Trust, to defend, investigate, settle, and otherwise process and dispose of all claims, suits, allegations or demands that may result in liability assumed by the Trust on behalf of the Member pursuant to this Agreement, or any other agreement, certificate, document, or other instrument executed by the Trust or the Member pursuant to this Agreement, notwithstanding the following rights which the Trust agrees the Member shall retain:
- a. The Member may, in its discretion and solely at its own expense, retain counsel (other than the attorney(s) provided pursuant to 19. below) to represent the Member against any claim, suit, allegations or demands. The Trust shall have no obligation to cover the cost of such retained counsel or any related expenses.
  - b. If the Member's limit of liability is exhausted and the Trust or its agent has not notified the Member of such exhaustion at least thirty (30) days prior, then the Trust shall continue providing the defense previously undertaken by the attorney(s) appointed by the Trust pursuant to 19. below for a reasonable period of time, not to exceed thirty (30) days, during which time the Member shall acquire control of the claims, suits, allegations or demands remaining at issue. However, the Member shall reimburse the Trust for any related expenses incurred during the transfer of the matter from the Trust-appointed attorney(s) to the attorney(s) chosen by the Member following exhaustion of Member's limit of liability.
19. The Member and the Trust agree that the Trust is to defend in the name of and on behalf of the Member any claims, suits or other legal proceedings which may at any time be instituted against the Member on account of any liability for monetary damages, to the extent such defense and liability has been assumed by the Trust pursuant to an obligation to defend that arises under this Agreement or any other agreement, certificate, documents, or other instrument executed by the Trust and the Member pursuant to this Agreement, subject to any and all of the definitions, terms, conditions and exclusions contained in said agreements, certificates, documents or other instruments. Further the Member agrees:
- a. For any occurrence resulting in a claim or suit for damages under this Agreement, the Trust, in its sole discretion, may investigate; settle; coordinate the defense of claims or counts within suits which may not be expressly covered by this Agreement but which provide strategic benefits through coordinated litigation; and/or use of any other reasonable means permitted by applicable rules of state law and attorney professional conduct, without the prior consent or approval of the Member.

- b. The Trust shall have no obligation to retain more than one attorney to defend all members involved in any single occurrence resulting in a claim or suit for damages covered by this Agreement.
- c. The Trust shall remain in control of the defense for any occurrence resulting in a claim or suit for damages for which the Trust is obligated to provide a defense or elects to provide a defense to the Member, whether covered or not covered by this Agreement, notwithstanding any of the following:
  - i. There is more than one defendant against whom a claim or suit is brought;
  - ii. There is any real or perceived conflict between or among the trust, any Member or any defendant(s) involved in any claim or suit;
  - iii. The Trust has reserved its rights to deny or limit its coverage in any claim or suit;
  - iv. The Trust or the Member initiates any claim or suit against any other Trust member.
- 20. In the event any court of competent jurisdiction orders the Trust to provide attorney representation beyond the attorneys the Trust selects and retains pursuant to 19. above, the Member shall be entitled to the fees and charges for such attorney representation only to the extent of usual and customary legal fees and charges paid by the Trust for reasonably similar representation.
- 21. The Member shall make prompt payment of all contributions as required by the Board. The Member shall fully cooperate with the service company and/or auditors of the Trust to promptly determine final audited contributions. Any disputes concerning contributions shall be resolved after payment. Any objections concerning the final audited contribution shall be filed within sixty (60) days of billing of the final audited contributions. After that time, the audit shall be considered to be final.
- 22. The Member agrees to pay reasonable penalties as determined by the Board of Trustees for late payment of contributions required under this Agreement, or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement.
- 23. The Member, through the Board of Trustees, does hereby appoint the Florida League of Cities, Inc. for the Trust as its agent and attorney-in-fact, to act in its behalf and to execute all necessary contracts, reports, waivers, agreements, excess insurance contracts, service contracts, and other documents reasonably necessary to accomplish the purposes and to fulfill the responsibilities of the Trust; to make or arrange for the payment of claims, claim expenses, medical expenses, and all other matters required or necessary insofar as they affect the Member's liability under federal or Florida law and insofar as such matters are covered pursuant to the terms of this Agreement or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement.
- 24. The Trust shall determine all questions of the scope of liability coverage, membership eligibility, methods of providing or arranging for benefits, and all other related matters. It shall have full power to construe the provisions of this Agreement and the other program documents. Any such determination and any such construction adopted by the Trust in good faith shall be binding upon all parties hereto and the members, provided such determination or such construction is consistent with state or federal law.
- 25. The Member agrees to abide by all the terms and conditions of this Agreement, the Participation Agreement, the Trust's By-laws, the rules and regulations now in existence or hereafter promulgated by the Board, and any other agreement, certificate, document, or other instrument executed by the Trust and the Member pursuant to the Agreement.
- 26. The Member and the Trust agree the Trust will maintain an excess coverage program and reserve evaluation to protect the financial stability of the Trust in an amount and manner determined by a qualified and independent actuary.

27. The Member and the Trust agree the Trust will submit to the appropriate governmental agency, when required by law, annual fiscal year-end audited financial statements prepared by an independent certified public accountant.
28. The Member and the Trust agree that any Florida public entity or agency that formally applies for membership in this Trust and is accepted by the Board of Trustees shall thereupon become a party to the Trust's Agreement and Declaration of Trust and be bound by all of the terms and conditions contained therein, and said application shall constitute a counterpart of said Agreement and Declaration of Trust.
29. Members duties after loss:

In the event of an occurrence for which there is reasonable belief that a claim or suit for damages will arise, the Member shall act in accordance with the following, and all references to the Trust shall also include, by reference, the Trust's Service Company:

- a. Give the Trust prompt written notice of any accident, occurrence or potential claim along with all relevant information concerning the claim. The Member shall have a continuing duty to provide to the Trust all relevant information promptly as the Member becomes aware of such information; and
- b. Cooperate fully with the Trust in defense or settlement of claims or opposition to claims bills, and in the enforcement of any right of contribution or indemnity; and
- c. Forward to the Trust every notice, demand, summons or other process served upon the Member relating to any occurrence, and take no further action concerning the occurrence without the approval of the Trust or the service company; and
- d. Take reasonable steps to prevent additional or cumulative bodily injury, personal injury or property damage from or arising out of the same or similar conditions or circumstances; and
- e. Not engage in settlement negotiations as to any claim or suit, and the Trust shall have no obligation to pay the amount of any settlement negotiated or agreed upon by a Member without prior written approval by the Trust or the service company; and
- f. Agree to take all reasonable actions, where appropriate, which shall facilitate settlement of claims; and
- g. Agree to responsible counsel selected by the Trust to defend the claim and agree not to use the Member's counsel in defense of said action, except where expressly provided otherwise under this Agreement or where expressly authorized by the Trust; and
- h. Keep all bills, receipts and related documents that establish the amount of loss; and
- i. Furnish a complete inventory of the loss, damaged and destroyed property, showing in detail the quantity and amount of loss claimed under the valuation provision of the Coverage Agreement; and
- j. Where applicable, promptly separate any damaged property from the undamaged property, and keep it in the best possible order for examination; and
- k. Take all reasonable steps to protect the covered property from further damage; and
- l. Give notice of such loss to the proper authorities if the loss may be due to a violation of the law; and

m. In the event of an occurrence resulting in any loss to an automobile covered by this Agreement, Member duties include the following:

- i. Notify law enforcement in the event any theft has occurred;
- ii. Take reasonable measures to protect the automobile from further harm or damage and document all expense incurred;
- iii. Allow the Trust reasonable access to the automobile for inspection and documentation of the loss;
- iv. Submit to an Examination Under Oath at the Trust's request, including a sworn statement attesting to the truth of all answers provided.

30. Transfer of Member's rights and duties under this Agreement.

Your rights and duties under this Agreement may not be transferred without written consent of the Trust. This applies to all coverages under this Agreement or any that may be added after the effective date of this Agreement.

Should your rights and duties be transferred to a legal representative, they may act only within their scope of duties with regard to this Agreement. Until your legal representative is appointed, anyone with proper temporary custody of your property will have your rights and duties but only with respect to that property.

31. Premiums.

- a. The Trust shall compute all contributions due from the Member (the Florida public agency named in this Trust Member Agreement and as named in the declarations to the coverage Agreement) and in accordance with policies and procedures it authorizes, which it may amend from time to time;
- b. The contributions required of the Member at the inception of coverage for any coverage year shall be deemed a "deposit premium" only. At the conclusion of every coverage year, the Trust is authorized to compute or audit the extent of coverage actually realized by the Member, deemed the "earned premium."
- c. If the deposit premium exceeds the earned premium, the Trust shall return the excess amount to the Member in a reasonable amount of time following the conclusion of the premium audit period. If the deposit premium is less than the earned premium, the Member shall owe the deficit amount to the Trust and shall remit same in accordance with the billing instructions provided along with notice of such deficit.
- d. The Member agrees that its failure to maintain all records, data, materials and/or any other evidence reasonably required for the Trust to compute or perform its audit of premiums shall authorize the Trust to utilize all reasonably available means to determine the earned premium and declare the amount of deficit or excess premium arising in any coverage year.

32. When a Claim is Considered Made:

For any occurrence resulting in a claim or suit for which coverage is sought under this Agreement, a claim shall be deemed to have been made upon the happening of one or more of the following:

- a. The first written notice of a "suit" is received by any Member from any person or entity advising that such person or entity intends to hold the Member responsible for covered damages cause by or resulting from the Member's action or inaction;
- b. The first written notice that any judicial, administrative or arbitration proceeding has been initiated against any Member that seeks to hold any Member responsible for covered damages

cause by or resulting from the Member's action or inaction; or

- c. The Trust reaches a legally binding settlement agreement with any person seeking damages that are alleged to be the result of the Member's action or inaction, and prior to any of the circumstances described in 32.a. or 32.b. above.

33. Actions challenging Trust's discretionary authority under the Agreement and Declaration of Trust:

- a. The Member agrees that in the event of any dispute against the Trust or any Board of Trustees member(s) that challenges the authority of the Trust to resolve all questions of coverage, membership eligibility, methods of providing or arranging for coverage benefits and all other matters relating to this pooled governmental self-insurance program, in which a court of competent jurisdiction enters a final, non-appealable order limiting the discretion of the Board of Trustees to determine such matters as provided for the Agreement and Declaration of Trust creating Florida Association of Counties Trust, the parties agree any related and unresolved issue remaining after such discretion-limiting order has been rendered shall be decided by neutral binding arbitration by the National Arbitration Forum, in accordance with their Code of Procedure then in effect. However, prior to commencement of any arbitration, the Member agrees to submit to non-binding mediation.
- b. In the event the parties cannot agree upon a mediator for the non-binding mediation required herein, at the request of either party, a mediator shall be chosen by the American Arbitration Association, in accordance with its rules. The parties shall equally share the costs of mediation. Once mediated, a party may not demand mediation of the same facts for which an arbitration demand has been made regarding previously-mediated facts.
- c. In the event a dispute requires resolution through arbitration, the arbitration shall take place in Orange County, Orlando Florida.
- d. These arbitration procedures shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §§ 1-16. The Florida Arbitration Code, §682.01, Florida Statutes, shall not apply to this arbitration provision.
- e. In the absence of a resolution of any dispute which the FACT Board of Trustees was precluded from reaching by operation of court order, the parties hereby represent and affirm that they willingly forego their right to litigate any such dispute in a court of law and agree that any such disputes shall be decided through the dispute resolution process described in this section.

Agreement #: FACT 9017

Designated Member: Sumter County Board of County Commissioners

AGREED AND ENTERED this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_



For the Trust

Don Lund

Printed Name

Associate Director of Insurance Services

Title

For the Member

Printed Name

Title

## FLORIDA ASSOCIATION OF COUNTIES TRUST

### COVERAGE AGREEMENT

#### APPLICABLE TO: GENERAL/PROFESSIONAL LIABILITY

In consideration of the Designated Member's payment of the required contributions and the covenants and terms set forth in (a) the TRUST MEMBER AGREEMENT, the statements and representations contained in (b) the Designated Member's APPLICATION FOR COVERAGE, (c) the DECLARATIONS and the terms, conditions, limits of liability, exclusions and other provisions of (d) the COVERAGE AGREEMENT including any endorsements thereto, (a, b, c, and d shall hereinafter collectively form and be referred to as the "Agreement"), the Florida Association of Counties Trust (hereinafter the "Trust") hereby enters this Agreement with the Designated Member as follows:

#### A. COVERAGES

The Trust will pay all sums which a member becomes legally obligated to pay as damages because of:

Bodily Injury Liability;  
Property Damage Liability;  
Personal Injury Liability;  
Advertising Injury Liability;  
Errors and Omissions Liability; or  
Civil Rights Liability

to which this Agreement applies, when caused by an occurrence which takes place during the coverage period of this Agreement.

#### B. LIMITS OF LIABILITY

Regardless of the number of (1) members under this Agreement, (2) persons or organizations who sustain injury or damage or (3) claims made or suits, the liability of the Trust is limited as follows:

##### General/Professional Liability General Aggregate Limit:

During the annual coverage period in which this Agreement is in effect, the most the Trust will pay under this General/Professional Liability coverage part for damages, including but not limited to, damage awards for derivative claims, taxable costs, claimant attorney's fees, and judgment interest incurred by the Trust shall be the General/Professional Liability General Aggregate Limit stated in the declarations to this coverage part, including applicable endorsements, if any, referenced therein.

##### General/Professional Liability Per Occurrence Limit:

During the annual coverage period in which this Agreement is in effect, the most the Trust will pay under this General Professional Liability coverage part for damages as the result of any one occurrence, including but not limited to damage awards for derivative claims, taxable costs, claimant attorney's fees and judgment interest incurred by the Trust shall be the General/Professional Liability Per Occurrence Limit stated in the declarations, including any applicable endorsements referenced therein.

##### Fire Damage Per Occurrence Limit:

In any claim or suit for damages in which the alleged basis of member liability is property damage liability caused by fire, the most the Trust will pay for damages as the result of any one occurrence of property damage caused by fire shall be the Fire Damage Per Occurrence Limit stated in the declarations to this coverage part.

**Supplemental Payments:**

The Trust will pay the following costs and expenses, hereinafter referred to as Supplemental Payments, required by the Trust to investigate, settle and/or defend any claim or suit:

1. All expenses incurred by the Trust for the investigation, defense or settlement of any claim or suit;
2. Up to \$250, at the Trust's option, for the cost of bail bonds (including bonds for related traffic law infractions required because of an occurrence covered under this Agreement);
3. The costs of bonds required to release attachments in any suit the Trust defends, but only for such bond amounts within the unused portion of the stated limit of liability provided in the declarations;
4. All reasonable expenses incurred by the member at the express request of the Trust, including actual loss of earnings up to \$250 per day because of time off from work, but only for such amounts within the unused portion of the stated limit of liability provided in the declarations;
5. All costs taxed against the member in any suit the Trust defends, including plaintiffs attorneys' fees awarded pursuant to 42 United States Code §1988 because of a covered count in any suit the Trust defends, but excluding any other award of plaintiffs attorneys' fees awarded under any other federal, state or local law or regulation;
6. All prejudgment interest that accrues on the full amount of any judgment paid by the Trust, excluding any prejudgment interest that accrues after the date upon which the Trust makes an offer to pay the unused portion of the stated limit of liability provided in the declarations;
7. All interest that accrues on the full amount of any judgment after entry of the judgment in any suit the Trust defends, but the Trust's duty to pay interest ends after the date upon which it offers to pay, pays or deposits into the registry of the court, that portion of any judgment that is within the unused portion of the stated limit of liability provided in the declarations;
8. The amount of expenses incurred by the member for first aid to others that arise at the time of an occurrence for which there are damages from bodily injury covered under this Agreement.

**Supplemental Payments Conditions:**

For any claim or suit investigated, settled and/or defended by the Trust, Supplemental Payments shall in all cases be paid in addition to the above-described Limits of Liability.

For the purpose of determining the limit of the Trust's liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

**C. DEFENSE AND SETTLEMENT**

**1. Defense**

The Trust will pay the expenses, costs or other payments reasonably required to settle or defend, as it considers appropriate, any claim or suit demanding money damages covered by this Agreement. The Trust may defend any suit against a member which alleges a claim for money damages covered by this Agreement even if such claim or suit is eventually found groundless, false or fraudulent. However, the Trust has no duty to defend a member in any claim or suit which on its face alleges facts not covered by this Agreement.

In the event a suit or other action contains allegations which allege damages or relief which the Trust has a duty to defend and other allegations which allege damages or relief that the Trust does not have a duty to defend, the Trust may defend all allegations subject to the terms, conditions, limits of liability and exclusions of the Agreement. However, undertaking such defense shall not obligate the Trust to pay any defense costs, fees, judgments, settlements or any damages which a member becomes legally obligated to pay for allegations to which coverage under this Agreement



does not apply. The Trust hereby expressly reserves its right to deny any payments under such circumstances. The Trust's obligation to defend or otherwise indemnify the member shall in all cases end when applicable limits of liability have been exhausted.

The Trust may, at its discretion, investigate any occurrence resulting in a claim for damages and settle, in whole or in part, any such claim.

## 2. Settlement Obligations of the Trust

A. The Trust shall have no obligation to the member, any excess or reinsurance carrier, any third party claimant or any purported third party beneficiary of any of the foregoing to:

1. Settle any claim or suit within the limit of liability shown in the declarations;
2. Offer to settle any claim or suit within the limit of liability shown in the declarations;
3. Offer to settle any claim or suit, or otherwise remit payment of any coverage applicable to any claim or suit for which there is coverage under this Agreement, in any manner deemed most favorable to any member or third party; or
4. Advise the member of the existence, availability or applicability of any excess or reinsurance coverage.

B. As a condition of coverage under this Agreement, the member agrees that settlement of any claim or suit may involve the payment of proceeds and/or the taking or forbearing to take certain actions by the member. Accordingly, the following requirements shall apply to all settlement efforts by the Trust and any party acting as the Trust's appointed representative or agent:

1. For any occurrence resulting in a claim or suit for damages, if the Trust gives written notice of its recommendation for settlement, including the payment of proceeds to settle a claim or suit and/or the taking or forbearing to take certain actions by the member, and the member does not affirmatively accept such recommendation within a reasonably requested time period contained in the notice, not to exceed thirty (30) days following receipt of such notice, the Trust's sole coverage obligation to the member shall then not exceed the lesser of:
  - a. The sum for which the claim or suit could have been settled at the time set forth in the notice of the Trust's recommendation for settlement; and
  - b. the costs and expenses incurred by the Trust in relation to the claim or suit, through the date at which the member was required to provide its affirmative acceptance of the recommendation for settlement; or
  - c. if less than the sum of a. and b. above, the unused portion of the stated limits of liability contained within the declarations, less any self-insured retention or deductible amounts owed by the member.
2. In its application of the foregoing provision, the Trust shall have no obligation to obtain prior notice or authorization of the member or its legal counsel to make any proposed settlement, actual settlement or partial settlement of any claim or suit covered under this Agreement.

## D. DEFINITIONS

The following definitions apply throughout this Agreement unless modified or excluded:

1. **Advertising Injury** means a claim for damages alleging injury arising solely out of an offense committed during the Agreement period and occurring in the course of the Designated

Member's advertising of its goods, products or services, but only if such injury arises out of libel, slander, defamation, violation of right of privacy, oral or written publication of material, misappropriation of advertising ideas or style of doing business or infringement of copyright, title, or slogan, but excluding any bodily injury liability, property damage liability, wrongful employment practices liability, employee benefits errors and omissions liability or civil rights liability.

2. **Additional insured** means that person, party, entity, partnership, joint venture, limited liability company or other organization designated in an amendatory endorsement made part of this Agreement or through Certificate of Coverage, but coverage is afforded only to the extent provided therein and coverage shall not exceed the limits of liability applicable to the Designated Member that are specified in the declarations of this Agreement.
3. **Agreement Territory** means the United States of America, its territories and possessions, Puerto Rico and Canada (primary coverage territory). It also means international waters or airspace, provided the injury or damage does not occur in the course of travel to or from any place other than the primary coverage territory; or any other place in the world if the injury or damage arises out of: goods or products made or sold by the member in the primary coverage territory or the activities of a person whose home is in the primary coverage territory but is away for a short time on Designated Member business.
4. **Automobile** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.
5. **Automobile Pollution Expense** means:
  - a. Any cost or expense arising from a claim that alleges an automobile-related pollutant has been unintentionally discharged or released from an automobile for which there is coverage under this Agreement.
  - b. Automobile Pollution Expense does not include any automobile-related pollutant that:
    - i. is in a state of transit or movement, anytime before, or after it ceases, being put to its mechanical use as intended by its manufacturer within an automobile covered by this Agreement; or
    - ii. is only being stored, disposed of, treated or processed in an automobile covered by this Agreement, and not put to its intended mechanical use.
  - c. Automobile Pollution Expense shall include fuel, lubricants, fluids, exhaust gases or other substances necessary for the ordinary electrical, hydraulic or mechanical functioning of an automobile covered by this Agreement if:
    - i. the fuel, lubricants, fluids, exhaust gases or other substance are discharged or released directly from an automobile component designed to hold or collect it; and
    - ii. any related cost, expense or damages do not arise from the operation of air compressors, pumps and generators, including spreading, welding and building cleaning equipment; or geophysical exploration and well servicing equipment; or cherry pickers and similar devices used to raise or lower workers.
  - d. Automobile Pollution Expense shall include such costs or expenses arising from an occurrence, away from the premises owned or leased by the Designated Member and involving any automobile-related pollutant not being put to its mechanical use as intended by its manufacturer within an automobile covered by this Agreement if:

- i. the automobile-related pollutant is discharged or released as a direct result of the ordinary, intended mechanical operation or use of an automobile covered by this Agreement; and
  - ii. the discharge or release of such automobile-related pollutant is caused directly by the upset, overturn, or damage to the automobile or the automobile-related pollutant.
- 6. **Automobile-Related Pollutant** means any solid, liquid or gaseous irritant, acid, alkali, chemical or like environmental contaminant used in the ordinary, intended mechanical operation of an automobile.
- 7. **Bodily Injury Liability**, means bodily injury, sickness, disease, disfigurement or death caused by an occurrence resulting in a claim or suit for damages and excludes any liability arising from wrongful employment practices liability, employee benefits errors and omissions liability, personal injury liability, advertising injury liability or civil rights liability.
- 8. **Claim** means a demand or charge made against a member, whether formal or informal, based on an alleged occurrence involving the member, and includes any such demands or charges that mature into a suit. Claim does not include a labor grievance or other matter provided for in a collective bargaining agreement.
- 9. **Civil Rights Liability** means a claim for damages alleging liability based on violation of Title 42, United States Code, §§1981, 1982, 1983, 1985 and/or 1986, and excluding any claim for damages arising from wrongful employment practices liability or employee benefits errors and omissions liability.
- 10. **Contractual Liability** means liability expressly assumed under a written contract or agreement; provided, however, that contractual liability shall not be construed as including liability under a warranty of the fitness or quality of the Designated Member's products or a warranty that work performed by or on behalf of the Designated Member will be done in a workmanlike manner; and provided, however, that contractual liability shall not be construed as including liability under any hold harmless agreement or agreement to indemnify any non-public or private person, corporation, or other entity under any contract or agreement, unless required for an additional insured.
- 11. **Damages** means all monetary sums which a member becomes legally obligated to pay as a result of an occurrence resulting in bodily injury liability, property damage liability, personal injury liability, advertising injury liability, errors or omissions liability or civil rights liability. When wrongful employment practices liability or employee benefits errors and omissions liability is provided for in this coverage part by endorsement(s) reflected in the declarations to the Agreement, damages may also include sums which a member becomes legally obligated to pay as a result of an occurrence resulting in wrongful employment practices liability or employee benefits errors and omissions liability.
  - a. Damages shall exclude:
    - i. punitive or exemplary damages;
    - ii. civil or criminal penalties or fines;
    - iii. taxes;
    - iv. the multiplied portion of any damage award by a court (i.e. double or treble damage awards) in excess of the principal damages awarded by a court; and

- v. any court or other tribunal order to take or forbear taking any action;
  - vi. any fees or costs claimed or incurred as a result of a claim or suit, unless specifically provided for under the Supplemental Payments provisions of this General/Professional Liability coverage part of the Agreement;
- b. Damages, for purposes of Wrongful Employment Practices Liability, shall exclude:
- i. salary, wages, benefits or other compensation;
  - ii. back pay, front pay, back or front benefits or other compensation;
  - iii. interest or penalties on any such measure of damages described in this subsection; and
  - iv. any costs or expenses ordered to be paid in connection with providing equipment, facilities, personnel, physical modifications, alterations or improvements ordered in connection with alleged violation of the Americans with Disabilities Act of 1990 (ADA), the Rehabilitation Act of 1973 or any similar federal, state or local enactment.
12. **Designated Member** means the entity or organization named in Item I. of the declarations of this Agreement or included by reference in Item V. of the declarations of this Agreement; Designated Member does not include employees or agents of such entity or organization.
13. **Designated Member's Products** means goods or products manufactured, sold, handled, or distributed by the Designated Member or by others trading under its name, including any container thereof (other than a vehicle), but "Designated Member's products" shall not include a vending machine or any other property, rented to the Designated Member or located for use of others but not sold.
14. **Elevator** means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof; but does not include an automobile servicing hoist, a material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter.
15. **Employee Benefits Errors and Omissions Liability** means a claim for damages alleging any misstatement, omission, neglect or breach of duty in explaining, interpreting, recordkeeping, enrolling, terminating, projecting estimated benefits or processing claims for benefits, in connection with an Employee Benefits Program, and excludes any bodily injury liability, property damage liability, personal injury liability or advertising injury liability.
16. **Employee Benefits Program** means any pension and profit sharing plan; individual retirement account (IRA) plan; salary reduction plan permitted for purposes of retirement savings under Internal Revenue Code 401 (k), 457(b), or any similar provisions of federal law, including any amendments thereto; employee stock subscription plan, savings plan; group plan for life, health, dental, disability, automobile, home owners, or legal services insurance; social security system benefits; workers' compensation and unemployment insurance; travel and vacation plans; educational tuition reimbursement plan or any other employee benefit programs created, administered or endorsed by the Designated Member for the benefit of individuals it employs.
17. **Errors and Omissions Liability** means a claim for damages alleging liability for any error, misstatement, omission, neglect or breach of duty by members while acting in their official capacity or within the scope of their employment, whether acting individually or collectively, and excluding any bodily injury liability, property damage liability, personal injury liability, advertising

injury liability, wrongful employment practices liability, employee benefits errors and omissions liability or civil rights liability.

18. *Intentionally left blank*

19. **Incidental Contract** means a written (a) lease of premises; (b) easement agreement, except any in connection with construction or demolition operations on or adjacent to a railroad; (c) agreement or contract to indemnify a governmental entity, other than the member, except in connection with the member's work for a governmental entity; (d) agreement or contract pertaining to the member's governmental operations (including indemnification of a municipality other than the member in connection with work performed for that municipality) under which the member assumes the tort liability of another party; (e) agreement or contract pertaining to the rental or lease by the member of any automobile, except, however, to the extent such agreement or contract requires the member to pay for property damage to the rented or leased automobile; or (d) elevator maintenance agreement.

20. **Incidental Medical Malpractice Injury** means injury arising out of:

- a. emergency medical services rendered or which should have been rendered to any person or persons by any duly certified emergency medical technician, paramedic; or
- b. medical services rendered or which should have been rendered to any person or persons by any nurse, EMT Director, Medical Examiner or County Coroner who is employed by or acting on behalf of a Designated Member to provide such services, but is not employed at a hospital, clinic or nursing home facility.

21. **Inverse Condemnation** means any affirmative regulatory action by a Designated Member resulting in the deprivation of substantially all economically beneficial or productive use of private property and the resulting cause of action by the affected property owner to recover any loss in monetary value resulting from the regulatory action. For purposes of this Agreement, "Inverse condemnation" shall include the taking, in whole or in part, of any real or personal property or interest therein or the right to the possession, benefit, use or enjoyment thereof; adverse possession; dedication by adverse possession; trespass or similar actions.

22. **Loading or unloading** means the handling of property:

- a. after it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or automobile;
- b. while it is in or on an aircraft, watercraft or automobile; or
- c. while it is being moved from an aircraft, watercraft or automobile to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or automobile.

23. **Member** means:

- a. the Designated Member;
- b. while acting within the scope of his or her duties or employment, any officer, volunteer, or employee of the Designated Member, including elected and appointed officials, and members of Boards or Commissions. However, the coverage so provided any officer, employee or volunteer does not apply to bodily injury liability, property damage liability,

personal injury liability, advertising injury liability, errors and omissions liability or civil rights liability to or against another officer, employee or volunteer of the Designated Member, or any of either's immediate family members, injured in the course of and arising out of his or her duties or employment;

- c. any person or entity, other than the Designated Member's officer, volunteer or employee, while acting as the Designated Member's real estate agent; and
- d. any person or entity acting as the legal representative of a deceased member.

Except with respect to the limits of liability of the Trust and any deductible shown in the declarations to this Agreement, the coverage afforded applies separately to each member against whom a claim is made or suit is brought; and does not apply to claims for damages arising out of the conduct of any partnership or joint venture of which a member is a partner or participant and which is not specified in this Agreement as a Designated Member directly or by endorsement.

- 24. **Mobile Equipment** means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (a) not subject to motor vehicle registration, or (b) maintained for use exclusively on premises owned by or rented to the Designated Member, including the ways immediately adjoining, or (c) designed for use principally off public roads, or (d) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers, graders, scrapers, rollers and other road construction or repair equipment; air compressors, pumps and generators, including spreading, welding and building cleaning equipment; geophysical exploration and well servicing equipment; and cherry pickers or similar devices used to raise or lower workers.
- 25. **Occurrence** means an event or accident, including continuous or repeated exposure to the same general harmful conditions, which results in a claim or suit for damages covered by this Agreement and not arising from any form of intentional misconduct. A single occurrence shall be deemed to arise in the event one or more claims for damages allege injury based on a series of similar causes or allege injury based on a common nucleus of operative facts:
  - a. that happen over a period of time; or
  - b. that happen repeatedly; or
  - c. that form a course of conduct; or
  - d. that involve ordinances, resolutions, policies, procedures or legislative enactments that involve the same or substantially similar subject matter; or
  - e. that involve the adoption or enforcement, failure to adopt or failure to enforce: ordinances, resolutions, policies, procedures or legislative enactments that involve the same or substantially similar subject matter; or
  - f. that are certified by a court of competent jurisdiction to form the basis for class-action litigation.
- 26. **Personal Injury** means injury, other than injury related to bodily injury, wrongful employment practices, employee benefits errors and omissions liability, advertising injury liability or civil rights liability, sustained by any person or organization and allegedly arising out of one or more of the following enumerated offenses committed during the term of this Agreement:
  - a. false arrest, detention, imprisonment;

b. wrongful entry or eviction, or other invasion of the right of private occupancy;

c. publication or utterance:

i. of a libel or slander or other defamatory or disparaging material;

ii. in violation of an individual's right of privacy;

except that publications or utterances in the course of or related to broadcasting, publishing, or telecasting activities conducted by or on behalf of the Designated Member shall not be deemed personal injury; or

d. malicious prosecution

27. **Pollutants** mean any solid, liquid, gaseous or thermal irritant or contaminate, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and electromagnetic radiation, liquids, gases, other irritants or contaminants and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

28. **Products-Completed Operations Hazard:**

a. Shall include all bodily injury and property damage occurring away from premises you own or rent and arising out of your product or your work except:

i. products that are still in your physical possession; or

ii. work that has not yet been completed or abandoned. However, your work will be deemed completed at the earliest of the following times:

(a) when all of the work called for in your contract has been completed;

(b) when all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or

(c) when that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or sub-contractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. But does not include bodily injury or property damage arising out of:

i. The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the loading or unloading of that vehicle by any member;

ii. The existence of tools, uninstalled equipment or abandoned or unused materials; or

iii. Products or operations for which the classification, listed in the declarations or in a policy schedule, states that products-completed operations are subject to the aggregate limit of liability.



**29. Property Damage means:**

- a. physical injury to or destruction of tangible property which occurs during the coverage period of this Agreement, including the loss of use thereof at any time resulting there from; or
- b. loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the coverage period of this Agreement; but,
- c. when fire causes property damage, as described in 29.a. and/or 29.b. above, to structures or portions thereof rented to or leased to the member or temporarily occupied by the member with the permission of the owner, the meaning of property damage shall only be applied subject to the following conditions:
  - i. All of the exclusions of the Agreement, other than the Nuclear Energy Liability Exclusion, shall be replaced by the following:

This coverage does not apply to liability assumed by the member under any contract or agreement;

- ii. Subject to the limits of liability section of this Agreement, the limit of liability when fire causes property damage is \$50,000 per occurrence, unless otherwise specifically stated in the declarations or in an endorsement that forms part of this Agreement; and
    - iii. The limits of liability when fire cause property damage shall be excess over any valid and collectible property insurance (including any deductible portion thereof), available to the member, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the other insurance provisions of the Agreement are amended accordingly.
  - d. property damage excludes any liability arising from wrongful employment practices liability, employee benefits errors and omissions liability, personal injury liability, advertising injury liability or civil rights liability.
- 30. Sexual Action** includes, but is not limited to, any verbal or non-verbal communication, behavior or conduct with sexual connotations or purposes, whether for sexual gratification, intimidation, coercion or other purpose, and regardless of whether such action is alleged to be intentional or negligent.
- 31. Sexual Abuse** shall include, but is not limited to, the negligent or intentional infliction of physical, emotional or psychological injury or harm on any person or persons in the care, custody or control of any member and also includes one or more of the following acts:
- a. any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.
  - b. any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
  - c. any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

- d. the intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the individual or the perpetrator, except that this does not include:
    - i. any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for an individual; or
    - ii. any act intended for a valid medical purpose.
  - e. the intentional masturbation of the perpetrator's genitals.
  - f. the intentional exposure of the perpetrator's genitals in the presence of an individual, or any other sexual act intentionally perpetrated in the presence of an individual, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.
  - g. the sexual exploitation of an individual, which includes allowing, encouraging, or forcing an individual to:
    - i. solicitation for or engage in prostitution; or
    - ii. any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.
32. **Suit** means a civil court legal proceeding which alleges bodily injury liability, property damage liability, personal injury liability, advertising injury liability, errors and omissions liability, civil rights liability, wrongful employment practices liability, employee benefits errors and omissions liability, covered auto pollution cost or expense and/or other covered member liability to which this coverage Agreement applies. Unless specifically excluded, suit may include:
- 1. an arbitration proceeding in which such damages are claimed and to which the member must submit or does submit without consent; or
  - 2. any other alternative dispute resolution proceeding in which such damages are claimed and to which the member submits with our consent.
33. **Wrongful Employment Practices Liability** means a claim for damages alleging any of the following acts or omissions by the member:
- a. discrimination, (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
  - b. employment-related misrepresentation(s) to an employee or applicant for employment with the member;
  - c. failure to provide or enforce adequate or consistent policies and procedure relating to any Wrongful Employment Practice;
  - d. harassment (including sexual harassment whether quid pro quo, hostile work environment or otherwise);
  - e. actual or alleged retaliation (including lockouts) or employment decisions involving violation of any federal, state, or local whistleblower protection law;

- f. wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
- g. wrongful discipline;
- h. wrongful dismissal, discharge or termination (either actual or constructive), including breach of an implied contract;
- i. wrongful failure to employ or promote.

**34. Your Product:**

- a. means:
  - i. any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (a) you;
    - (b) others trading under your name; or
    - (c) a person or organization whose business or assets you have acquired; and
  - ii. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products;
- b. and includes:
  - i. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your product; and
  - ii. the providing of or failure to provide warnings or instructions;
- c. but does not include vending machines or other property rented to or located for the use of others but not sold.

**35. Your Work:**

- a. means:
  - i. work or operations performed by you or on your behalf; and
  - ii. materials, parts or equipment furnished in connection with such work or operations;
- b. and includes:
  - i. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your work, and
  - ii. the providing of or failure to provide warnings or instructions.

**E. EXCLUSIONS**

This Coverage Agreement does not apply to any claim for damages related to bodily injury liability, property damage liability, personal injury liability, advertising injury liability, civil rights liability,

wrongful employment practices liability, errors and omissions liability or employee benefits errors and omissions liability arising from:

1. an expressed or implied contract or agreement under which the Designated Member assumes liability, except an incidental contract as defined herein or inter-local agreements with other governmental entities or any liability which the member would have without the contract or agreement; and this exclusion includes any claim or suit for breach of express or implied contract or any claim or suit in which breach of contract forms any basis of liability;
2. the ownership, maintenance, operation, use, loading or unloading of:
  - a. any automobile operated by or rented or loaned to any member;
  - b. any other automobile operated by any person in the course of his or her employment by any member; but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the Designated Member or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any member;
  - c. any automobile while being used in any pre-arranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any contest or activity;
3. any of the following:
  - a. the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any pre-arranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;
  - b. the operation or use of any trailer designed for use therewith; or
  - c. the ownership, maintenance, operation, or use of a skateboard/skate park facility, in-line skating facility or water theme park;
4. the ownership, maintenance, operation, use, loading or unloading of:
  - a. any watercraft over twenty-six (26) feet in length and being used to carry any person or property for a charge or fee;
  - b. any passenger while in or upon, entering or alighting from any watercraft; or
  - c. any barge or lighter rented by the Designated Member to others with respect to which the Designated Member does not furnish employees to operate and does not have any operating control;
  - d. any watercraft while being used in any pre-arranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any contest or activity;
  - e. any watercraft or structure being used as an artificial reef or similar purpose;
  - f. any marina operation owned, leased or operated by the Designated Member;
5. the ownership, maintenance, operation, use, loading or unloading of:
  - a. any aircraft owned or operated by or rented or loaned to any member;

- b. any other aircraft operated by any person in the course of his or her employment by any member; but this exclusion does not apply to aircraft while parked on premises owned by, rented to or controlled by the Designated Member; or
  - c. any maintenance, operation, use or control of or responsibility for any airfield, airport, runway, hangar, building or other property or facility designed for, used, connected, associated or affiliated with or in any way related to aviation or aviation activities or operations; provided that liability for services performed or premises located at or on any airfield, airport or aviation facility not directly related to aviation activities or operations, and not covered by any other liability insurance, shall not be excluded from coverage by this exclusion;
- 6. the actual or threatened discharge, dispersal, release, or escape of pollutants and/or contaminants into or upon the land, the atmosphere or any course or body of water, whether above or below ground or any loss resulting from exposure to pollutants; however, this exclusion does not apply to any bodily injury liability, property damage liability or civil rights liability allegedly resulting from the member's utilization of tear gas, mace, pepper spray, electronic or light stun devices or other similar materials or devices to subdue, restrain or control another individual or crowd; however, this exclusion shall not apply to any claim related to the provision of potable water delivered by pipe;
- 7. the ingestion, inhalation or absorption of lead in any form. Any loss, cost or expense arising out of any:
  - a. request, demand or order that any member or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of lead; or
  - b. claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead;
- 8. the process of continued surface and/or subsurface degradation and deterioration of lead-based paint that has been applied to any surface of any building whether considered commercial or residential;
- 9. war, whether or not declared, civil war, insurrection, rebellion and revolution, or to any act or condition incident to any of the foregoing;
- 10. any obligation for which any member or any carrier as its insurer may be held liable under any social security, workers compensation, employers liability, unemployment compensation or disability benefits law, or under any similar law including any claims under Title II of the Americans with Disabilities Act;
- 11. bodily injury to any employee of the Designated Member arising out of and in the course of employment by the Designated Member or to any obligation of a member to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the Designated Member under an incidental contract. This exclusion shall include any liability incurred by a member as a result of an alleged wrongful employment practice;
- 12. property damage to:
  - a. property owned or occupied by, leased, loaned or rented to, a Designated Member;

- b. personal property in the care, custody or control of the Designated Member; or
  - c. property the Designated Member sells, gives away or abandons, if the property damage arises out of any part of those premises
- 13. loss of use of tangible property which has not been physically injured or destroyed resulting from a delay in lack of performance by or on behalf of the Designated Member of any contract or agreement;
- 14. any claim or suit for damages arising from law enforcement operations or correctional facilities operations that, at the time of any such claim or suit, are not within the scope of the governmental operations and control of the Designated Member;
- 15. property damage to the Designated Member's products arising out of such products or any part of such products; to property damage to work performed by or on behalf of the Designated Member arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; and to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the Designated Member's products or work completed by or for the Designated Member or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- 16. any liability from the Designated Member's completed operations arising out of:
  - a. loss of sales, customers or profits suffered by a person or entity affected by the actions of the Designated Member or its agents including any damages sustained by such person or entities by virtue of a business interruption; or
  - b. loss resulting from theft of any property which at the time of loss is not an integral part of a building or structure including direct loss by pillage and looting occurring during and at the immediate place of a riot or civil commotion;
- 17. any liability arising in whole, or in part out of:
  - a. any act or omission of a member committed while acting outside the course and scope of the member's employment or official capacity, or committed to defraud or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property;
  - b. any member obtaining remuneration or financial gain to which the member was not legally entitled;
  - c. the willful violation of any federal, state or local law, ordinance or regulation, whether civil or criminal, committed by or with the knowledge or consent of any member; or
  - d. a violation of public trust;
- 18. any liability arising out of or in any way connected with the operation of the principals of eminent domain, condemnation proceedings, inverse condemnation or takings law, by whatever name called, whether permanent or temporary, including but not limited to, claims arising out of federal, state or local land use, environmental, air, ground or water pollution, or health, safety and welfare laws, ordinances or regulations, claims arising from Chapter 70, Florida Statutes, known as the Bert J. Harris, Jr. Private Property Rights Protection Act, as may be amended from time to time, or claims arising from activities by or on behalf of a member which result in permanent or temporary loss of use or value of private property,

whether such liability accrues directly against the member, or by virtue of any agreement entered into by or on behalf of the member;

19. any claim or suit for damages or any liability for injury, sickness, disease, death or destruction due to the rendering of or failure to render any professional service by any doctor, surgeon, dentist, nurse, physician's assistant, paramedic, emergency medical technician or other medical professional of a Designated Member, except as defined under Incidental Medical Malpractice;
20. any liability arising out of or in connection with or caused or contributed to by any failure or inability to supply, in whole or in part, any adequate quantity or quality of power, steam, pressure or fuel. Fuel includes, but is not limited to natural gas, heating oil and propane;
21. any liability arising out of or caused or contributed to by or connected with any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (Public Law 93-406) or any amendment thereto or any similar provision of any local, state or federal law, statutory or common;
22. any liability arising out of or caused or contributed to by any failure, breakage and/or water overflow of any reservoir, water barrier, dyke, dam or levee;
23. any liability for fines, punitive or exemplary damages; or any non-compensatory damages or penalties imposed pursuant to any federal or state anti-trust, anti-discrimination, or Racketeer Influenced and Corrupt Organization Act (RICO) laws;
24. any damages imposed by special act of the Florida State Legislature;
25. any bodily injury or property damage with respect to which:

Any member under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

- a. resulting from the "hazardous properties" of "nuclear material" and with respect to which any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or the "member" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- b. under any medical payments coverage, to expenses incurred with respect to bodily injury resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization; or
- c. under any liability coverage, to bodily injury or property damage resulting from "hazardous properties" of "nuclear material" if:
  - i. the "nuclear material" is at any "nuclear facility" owned by, or operated by or on behalf of, a "member" or has been discharged or dispersed therefrom;
  - ii. the "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of a "member"; or



- iii. the bodily injury or property damage arises out of the furnishing by a member of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility," but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion applies only to property damage to such "nuclear facility" and any property thereat.

As used herein:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility."

"Nuclear facility" means:

1. any "nuclear reactor";
2. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";
3. any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "member" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or
4. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste;"

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

26. personal injury arising out of any publication or utterance described in the definition of Personal Injury contained in the definitions section of this Agreement: (a) if the first injurious publication or utterance of the same or similar material by or on behalf of the Designated Member was made prior to the effective date of this coverage; or (b) concerning any

organization or business enterprise, or its products or services, made by or at the direction of any member with knowledge of the falsity thereof;

27. administrative proceedings of any kind, except for a proceeding involving the federal Equal Employment Opportunity Commission (EEOC) or its equivalent state counterpart, related to an occurrence that is reasonably likely to involve wrongful employment practices liability or as otherwise specifically provided for in this Agreement;
28. bodily injury or property damage for which the Designated Member or its indemnitee may be held liable:
  - a. as an entity or organization engaged in manufacturing, distributing, selling or serving alcoholic beverages; and
  - b. if so engaged, when such liability is imposed:
    - i. by, or because of the violation of, any local or federal law, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverages; or
    - ii. by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person; or
  - c. by reason of causing or contributing to the intoxication of any person.

This exclusion does not apply and coverage is afforded under the Agreement for bodily injury, property damage, personal injury, advertising injury, errors or omissions liability or civil rights claims or liability resulting from the providing or serving of alcoholic beverages without charge to the public at functions incidental to a Designated Member's business or activity otherwise covered under the Agreement or any endorsement to the Agreement;

29. any claim, demand or action seeking injunctive, declaratory, writ of mandamus, or any other non-monetary relief against a member;
30. any liability arising out of any actual or alleged sexual action, sexual abuse, communicable disease or employment related claim;

However, this exclusion does not apply and coverage is afforded under this Agreement to bodily injury liability or personal injury liability which may accrue against the Designated Member;

31. any liability for injury, loss or damage sustained by any person or entities arising from or in anyway involving asbestos or other products containing asbestos or to asbestosis or any other disease including mesothelioma and cancer related to asbestos exposure nor any liability for costs or expenses incurred in removing, cleaning up or nullifying such asbestos product;

It is understood and agreed that the intent and effect of this exclusion is to delete from all coverages afforded by this Agreement any loss, cost, or expense arising out of any governmental direction, order or request that the member test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize asbestos or asbestos products.

32. any liability arising out of, caused by, contributed to or connected with alleged violation(s) of the following:
  - a. Federal Fair Labor Standards Act;

- b. Florida Labor Organizations Law, Chapter 447, Florida Statutes;
  - c. National Labor Relations Act;
  - d. Worker Adjustment and Retraining Notification Act;
  - e. Consolidated Omnibus Budget Reconciliation Act of 1985;
  - f. Occupational Safety and Health Act;
  - g. Florida Unemployment Compensation Law, Chapter 443, Florida Statutes;
  - h. Federal Employers Liability Act;
  - i. Longshoreman's and Harbor Workers Act;
  - j. Family and Medical Leave Act; or
  - k. The Employee Polygraph Protection Act;
- 33. any claim or suit requesting return or reimbursement of a special assessment, tax, service charge or fee or any other overpayment to the Designated Member or member;
  - 34. any claim for damages including attorneys' fees, costs or expenses for any claim or suit, unless specifically provided for under the Supplemental Payments provisions of this Agreement;
  - 35. any damages which accrued or occurred prior to the effective date of this Agreement notwithstanding the date of the occurrence;
  - 36. advertising injury arising out of:
    - a. Failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas upon alleged breach of implied contract, or
    - b. Infringement of trademark, service mark, or trade name, other than titles or slogans, by use thereof or in connection with goods, products or services sold, offered for sale, or advertised, or
    - c. Incorrect description or mistake in advertising price of goods, products or services sold, offered for sale or advertised.

Also excluded with respect to advertising injury is:

- 1. any member in the business of advertising, broadcasting, or telecasting, or
  - 2. any injury arising out of any act committed by the member with actual malice;
- 37. any bodily injury liability, property damage liability, personal injury liability, advertising injury liability, products liability and completed operations hazard liability arising directly or indirectly out of:
    - 1. any actual or alleged failure, malfunction or inadequacy due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond by:

- a. any of the following, whether belonging to any insured or to others: (a) Computer application software; (b) Computer networks; (c) Microprocessors (computer chips) not part of any computer system; (d) Computer operating systems and related software; (e) Computer hardware, including microprocessors; or (f) Any other computerized or electronic equipment or components; or
    - b. any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in the preceding paragraph.
  - 2. any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in paragraph a. above;
- 38. any bodily injury liability, property damage liability, personal injury liability or advertising injury liability, for which any Designated Member or member under this Agreement may be held liable arising out of the actual or threatened occurrence, growth, release, transmission, migration, dispersal or exposure to any micro-organisms, biological organisms, bioaerosols or organic containments, including but not limited to mold, spores and/or fungus:
  - a. resulting from any actual or threatened exposure to, inhalation, absorption or ingestion of, or physical contact with mold, spores and/or fungus;
  - b. resulting from any actual or threatened mold, spores, and/or fungus upon any real property or personal property, product or work, premises, site or location, or any other tangible property, or any Designated Member or member or any other person(s) or organization(s), located anywhere in the world;
  - c. resulting from any loss, cost or expense for any testing, monitoring, clean-up, treatment or removal, or neutralization of mold, spores and/or fungus;
- 39. a. any injury or damage arising, directly or indirectly, out of a "certified act of terrorism" or an "other act of terrorism". However, with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:
  - 1. the total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
  - 2. fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
    - a. physical injury that involves a substantial risk of death; or
    - b. protracted and obvious physical disfigurement; or
    - c. protracted loss of or impairment of the function of a bodily member or organ; or
  - 3. the terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or

4. the terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

With respect to this exclusion, Paragraphs 1. and 2. describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

b. the following definitions are added:

1. "any injury or damage" means any injury or damage covered under any coverage part applicable, and includes but is not limited to bodily injury, property damage, personal and advertising injury, injury or environmental damage as may be defined in any applicable Coverage Part.
2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The federal Terrorism Risk Insurance Act of 2002 sets forth the following criteria for a "certified act of terrorism":

a. The act resulted in aggregate losses in excess of \$5 million; and

b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

3. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

- c. In the event of any incident of a "certified act of terrorism" or an "other act of terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part;

40. any claim for damages allegedly arising from a violation or failure to comply with any state, federal local or common law relating to an investment instrument or fixed annuity, issued by a corporation, government or other organization which offers evidence of a debt or equity, (i.e. security or securities) owned, managed, received or transmitted by the Designated Member or any claims attendant to such security or securities;
41. any bodily injury or property damage that is expected or intended from the standpoint of the member, however, this exclusion shall not apply to assault and battery committed for the purpose of preventing or eliminating danger in the operation of an aircraft or protecting persons or property or incident to a lawful arrest; and this exclusion shall not apply to any

- claim involving civil rights liability or wrongful employment practices liability;
42. any claim that arises from the intoxication of another person, the furnishing of alcohol to a person already intoxicated or to a person under the legal drinking age, or the violation of any federal, state or local law regulating the sale, distribution or use of alcoholic beverages;
43. any claim, with respect to errors and omissions liability, that:
- a. Constitutes a fraudulent, criminal or malicious error and omissions;
  - b. Constitutes liability for an injury to or loss, destruction, or disappearance of money, checks, drafts, securities or any tangible property or the loss of use of any of the aforementioned;
  - c. Constitutes liability for any injury to anyone regarded as the member; or
  - d. Constitutes liability for any injury caused intentionally by or at the direction of the Designated Member;
  - e. Constitutes liability for the failure of performance of any contract by an insurer or the failure to effect or maintain property insurance or bonds or to comply with any provisions of insurance contracts or programs or coverage agreements;
  - f. Constitutes liability for the provision or failure to provide medical, surgical, dental, nursing or diagnostic service or treatment, or the furnishing or dispensing or failure to furnish or properly furnish pharmaceutical drugs or medical, dental, or surgical supplies or equipment;
  - g. Constitutes liability for the performance of or failure to perform professional legal services, however, except when performed by any attorney or assistant employed by the Designated Member;
  - h. Constitutes a failure to provide all or any portion of benefits or obligations owed under any employee benefits program.
44. any claim for damages not specifically provided for under any of the federal statutes enumerated under civil rights liability in this Agreement;
45. any claim or suit for damages, with respect to Wrongful Employment Practices Liability, when that coverage is provided for under this Agreement, based on:
- a. any physical facilities corrective accommodation or improvements ordered or agreed to by the member based on alleged violation of the Americans with Disabilities Act;
  - b. an alleged breach of an oral or written contract of employment or an oral or written agreement to make payments if an individual is terminated from employment;
  - c. damages consisting of a recovery of:
    - i. back pay or front pay wages;
    - ii. back pay or front pay salary;
    - iii. any other form of compensation or benefits, whether retroactively or prospectively calculated; or

- iv. any interest or penalties that accrue upon any such wages, salary, compensation or benefits referenced above;
  - d. any liability which the member has assumed in a contract or agreement, excluding any liability which the member would have in the absence of such contract or agreement;
- 46. a claim, with respect to Employee Benefits Errors and Omissions Liability, when that coverage is provided under this Agreement:
  - a. for damages caused by, resulting from or arising out of:
    - i. the failure of performance by any contract of insurance;
    - ii. dishonest, fraudulent, criminal or malicious acts, errors, or omissions;
    - iii. insufficiency of funds to meet some or all obligations under any employee benefits program;
    - iv. the Designated Member's status as a debtor in possession in any bankruptcy proceeding;
    - v. any acts, errors, or omissions of any member serving in the capacity of a fiduciary (as defined by the Employee Retirement Income Security Act of 1974 or similar state, federal or local laws or regulations) of any employee benefits program;
    - vi. employee benefits errors and omissions for which the member has assumed liability in a contract or agreement, excluding any liability which the member would have in the absence of such contract or agreement;
  - b. for damages consisting of a recovery of:
    - i. back pay or front pay wages;
    - ii. back pay or front pay salary;
    - iii. any other form of compensation or benefits, whether retroactively or prospectively calculated;
    - iv. any interest or penalties that accrue upon any such wages, salary, compensation or benefits;
    - v. damages or other payments to an aggrieved employee payable as, in lieu of or as partial or full compensation for failure to receive benefits which have accrued under the terms of an employee benefits program, to the extent such benefits are available from funds accrued by the member for such benefits or from collectible insurance, notwithstanding the member's negligent act, error or omission in administering the employee benefits program which prevented the normal receipt of benefits by the aggrieved employee; or
  - c. for claims caused by, resulting from or arising out of:
    - i. failure of any investment to perform as represented by the member;
    - ii. advice given to any person to participate or not participate in any program included in an employee benefits plan;

- iii. the investment, or failure to invest, funds which are or should have been included in an employee benefits program; and
  - iv. a violation or failure to comply with any state or federal workers' compensation, unemployment insurance, social security or disability benefits law;
  - v. an injury to or loss, destruction, or disappearance of money, checks, drafts, securities or any tangible property or the loss of use of any of the aforementioned;
  - vi. any alleged liability for the performance of or failure to perform professional legal services, however, this exclusion shall not apply to any attorney employee of the Designated Member;
- 47. any claim for damages arising from employee benefits errors and omissions liability;
  - 48. any claim for damages arising from wrongful employment practices liability;
  - 49. any civil liability or personal injury liability for which the member has assumed liability in a contract or agreement, however, this exclusion does not apply to civil rights liability or personal injury liability the member would have had in the absence of the contract or agreement or to an incidental contract between the member and another unit of local government providing for mutual aid and assistance in the provision of the law enforcement, fire and/or civil defense services.

#### F. OTHER INSURANCE

The coverage afforded by this Agreement is excess, except when stated to apply in excess of or contingent upon the absence of other insurance. When this coverage is primary and the member has other insurance which, by its written terms and conditions, is applicable to the loss on an excess or contingent basis, the amount of the Trust's liability under this Agreement shall be reduced by the existence of such other insurance as provided hereinafter.

The coverage afforded by this Agreement shall be deemed excess over any other insurance, whether primary, excess, contingent, or on any other basis where:

- a. the claim arises from the maintenance or use of aircraft, automobiles or watercraft, to the extent not already excluded from coverage under this Agreement;
- b. the Designated Member is entitled to indemnification under an incidental contract;
- c. the claim for damages is covered by a specific endorsement to the basic coverage Agreement between the Designated Member and the Trust; or
- d. other insurance is applicable to the claim and consists of:
  - i. Fire, Extended Coverage, Builder's Risk, Installation Risk, Property Physical Damage or similar coverage for the Designated Member's Work; or
  - ii. Fire or other physical damage coverage for premises rented to the Designated Member.

When the coverage afforded by this Agreement is excess as provided herein, the Trust will have no duty to defend any suit that another person or entity has a duty to defend or for which funds are provided or reimbursed to the Designated Member for costs or expenses related to such suit.



If all other valid and collectible insurance provides for contribution by equal shares, the Trust shall not be liable for a greater proportion of such loss than would be payable if each party contributes an equal share until the share of each party equals the lowest applicable limit of liability under any one policy or coverage agreement or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining parties then continue to contribute equal shares of the remaining amount of the loss until each such party has paid its limit in full or the full amount of the loss is paid.

If any such other insurance does not provide for contribution by equal shares, the Trust shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of all valid and collectible insurance against such loss.

**THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY**

**FORM NAME: EMPLOYEE BENEFITS ERRORS AND OMISSIONS LIABILITY ENDORSEMENT**

It is noted and agreed Exclusion 47, Employee Benefits Errors and Omissions Liability, is deleted.

**THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY**

**FORM NAME: WRONGFUL EMPLOYMENT PRACTICES LIABILITY ENDORSEMENT**

It is noted and agreed Exclusion 48, Wrongful Employment Practices Liability, is deleted.

**THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY**

**LAW ENFORCEMENT LIABILITY ENDORSEMENT**

This endorsement issued by the Trust extends and modifies the provisions of the Agreement relating to Law Enforcement Liability as set forth below:

It is agreed that as of the effective date hereof the Agreement is amended in the following particulars:

This Agreement will provide coverage for losses, including personal injury, arising out of the course and scope of law enforcement activities for which the Designated Member has operational responsibility and control and includes, but is not limited to, false arrest, detention, malicious prosecution, excessive force and assault and battery.

It is further noted and agreed Exclusion 14 is deleted.

**THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY**

**FORM NAME: CONTINGENT LAW ENFORCEMENT LIABILITY ENDORSEMENT**

It is noted and agreed Law Enforcement Liability is added for the Designated Member described on the Declarations Page.

It is further noted and agreed the Sheriff and the Sheriff's Department (including the employees, volunteers or agents of either) of the Designated Member are excluded from this law Enforcement Liability Coverage.

The Definitions Section of the Agreement is amended to include the following definition:

Law Enforcement Liability means personal injury arising out of the course and scope of law enforcement operations and includes, but is not limited to, false arrest, detention, malicious prosecution, excessive force and assault and battery.

**THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY.**

**CONSTITUTIONAL OFFICER ENDORSEMENT**

It is noted and agreed that the following are included in the definition of Member as respects Definition 23 in FACT CA 1012.

- ☒ Clerk of the Court
- ☒ Tax Collector
- ☒ Property Appraiser
- ☒ Supervisor of Elections
- ☐ Sheriff

It is further noted and agreed that coverage is excluded for any Law Enforcement Operations associated with the Sheriff's Department.

**THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY.**

### **DEDUCTIBLE ENDORSEMENT**

This endorsement issued by the Trust provides for deductible amounts from the limits and coverage set forth in the Trust Agreement and Coverage Agreement.

IT IS AGREED THAT:

#### **I. GENERAL LIABILITY**

- A. The Trust's obligation under the bodily injury, property damage and personal injury coverages in the Agreement to pay damages on behalf of the Designated Member applies only to the amount of damages in excess of any deductible amounts stated in the declarations as applicable to such coverages, or coverage endorsements.
- B. The deductible amounts stated in the declarations apply with respect to all damages to all persons or property incurred as a result of any one occurrence, including payments to third parties in settlement of covered claims or satisfaction or judgment.
- C. The terms of the Coverage Agreement remain in full force and effect, including those with respect to:
  - 1. the Trust's rights and duties in the defense of suits and
  - 2. the Member's duties in the event of an occurrence, irrespective of the application of the deductible amount.
- D. The member will immediately report:
  - 1. all incidents which may give rise to liability occurring on the Designated Member's property and/or involving member's vehicles or equipment;
  - 2. all Notice of Claims;
  - 3. all lawsuits involving a claim for damages.
- E. The Trust shall select and retain defense attorneys for all litigation and directly control and supervise their activities. All attorneys' fees, costs and expenses incurred in the defense of any claim shall be paid by the Trust and do not apply to the deductible.
- F. The deductible amount shall include the amount of any payment to a third party for damages resulting from a covered claim in the aggregate up to the deductible amount stated in the Declarations.
- G. Investigation and adjustment expenses incurred by the Trust, in the defense of any claim, shall be paid by the Trust and not included in the deductible amount.
- H. The Trust may settle or defend any claim or suit demanding money damages as it considers appropriate regardless of any deductible amount, and the member shall pay the amount of any settlement up to the deductible amount upon request of the Trust.

#### **II. GENERAL CONDITIONS**

- A. The Trust is authorized to make reasonable additions, changes or deletions to these reporting requirements.

- B. Reimbursement of the Trust: The Member will reimburse the Trust the invoiced amount due within 45 days of the invoice date. Failure to pay this sum will result in the revocation of the Member's deductible plan privileges.



**THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY**

**SPECIFIC EXCESS ENDORSEMENT - GENERAL LIABILITY**

This endorsement, when issued by the Florida Association of Counties, does not in any way modify the provisions of the Coverage Agreement. It does extend the monetary limits of liability, as stated in the Limits of Liability in the Declarations, as set forth below:

It is agreed that the specific limits of liability are \$ 1,000,000 per occurrence, solely for any liability resulting from entry of a claims bill pursuant to Section 768.28(5) Florida Statutes or liability imposed pursuant to Federal Law, if such liability is covered by the Agreement. The limits provided herein are inclusive of the \$200,000 each person and \$300,000 each occurrence liability limitations confined in Section 768.28 (5), Florida Statutes, but in no way exceed \$ 1,000,000 per occurrence and not to exceed the Aggregate Limit described in the General Liability Declarations page.

Exclusion 24 is amended as follows:

To any damages imposed by an act of the Florida legislature, except for claims bills passed by the legislature pursuant to Section 768.28(5), Florida Statutes, against a member, for damages covered under the terms of this Agreement.

**THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ CAREFULLY.**

**ADDITIONAL INSURED ENDORSEMENT**

This Endorsement modifies the General Liability Coverage Agreement as follows:

It is agreed that as of the effective date of this Endorsement, the Agreement is amended in the following particulars:

- I. This Endorsement issued by the Trust extends and modifies the provisions of the Agreement relating to "bodily injury" and/or "property damage" to include coverage for the party(ies) listed below (hereinafter "additional insured") for claims or suits for damages made against the "additional insured." However, this coverage shall be provided only with respect to "bodily injury" or "property damage" caused in whole or in part by the acts, omissions and/or negligence of the designated member.

The insurance afforded under this Endorsement shall only apply to claims, suits, and/or damages arising as a result of any written contract(s) or agreement(s) in which the designated member agrees to name the party(ies) listed below as an "additional insured" for damages caused in whole or in part by the acts, omissions and/or negligence of the designated member. The insurance afforded under this Endorsement shall not apply to claims, suits, and/or damages caused solely by the acts, omissions and/or negligence of the "additional insured(s)."

To the extent, if any, that this Endorsement affords coverage to an "additional insured," the "additional insured" is subject to all of the terms of the Agreement and shall be treated in like manner as the designated member.

For the purpose of this Endorsement, the designated member is the person or entity designated on the Declarations Page of the Agreement or on any endorsement. The "additional insured" shall *only* be that person or entity identified in the schedule below.

The obligation of the Trust to provide coverage to an "additional insured" is further limited by the interest of the "additional insured" as defined below.

The Interest of the Additional Insured(s) shall be that arising from the following contract(s) or agreement(s) expressly approved by the Trust:

1. Identity of Additional Insured: **LSCC (Lake Sumter Community College)**  
**Attn: Becky Fudge**  
**1405 CR 526A**  
**Sumterville, FL 33586**
2. Interest of Additional Insured:
3. Location of Premises, if applicable:
4. Limit of Liability: same as described in the General/Professional Liability section of the Declarations Page.

- II. The Exclusion Section of the Agreement is amended as follows for this Endorsement:


This Coverage Agreement does not apply:

- A. to liability assumed by a designated member under any hold harmless agreement, agreement to indemnify, or other express or implied contract or agreement, except an incidental contract as defined herein, or contracts and interlocal agreements specifically listed on any Additional Insured Endorsement issued by the Trust;
- III. The Definitions Section of the Agreement is amended as follows for this Endorsement:
35. Interlocal Agreement means an agreement entered into pursuant to Chapter 163, Part I, Florida Statutes.
- IV. The inclusion of the "additional insured(s)" shall not operate to increase the Trust's Limit of Liability.

Agreement No.: FACT 9017

Designated Member: Sumter County Board of County Commissioners

Countersigned by: \_\_\_\_\_

  
(Authorized Representative)

THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT ENDORSEMENT**

**GENERAL LIABILITY COVERAGE PART**

- I. Schedule
  1. Identity of Additional Insured(s): **Pac-Van, Inc.**  
**2995 South Harding Street**  
**Indianapolis, IN 46225**
  2. Description of Leased Equipment: **Modular Unit for temporary office space for the Solid Waste Department**
- II. The Definitions section of the Agreement is amended as follows for this Endorsement:
  - A. Member (Definitions: 23) is amended to include as an insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" and/or "property damage" caused, in whole or in part, by the Member's maintenance, operation or use of equipment leased to the Member by such person(s) or organizations.
  - B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any occurrence which takes place after the equipment lease expires.

Agreement No.: FACT 9017

Designated Member: Sumter County Board of County Commissioners

Countersigned by: \_\_\_\_\_

(Authorized Representative)

THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT ENDORSEMENT**

**GENERAL LIABILITY COVERAGE PART**

- I. Schedule
  1. Identity of Additional Insured(s): **Ring Power Corporation**  
**9901 Ringhaver Drive**  
**Orlando, FL 32824**
  2. Description of Leased Equipment: **Rented Equipment**
- II. The Definitions section of the Agreement is amended as follows for this Endorsement:
  - A. Member (Definitions: 23) is amended to include as an insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" and/or "property damage" caused, in whole or in part, by the Member's maintenance, operation or use of equipment leased to the Member by such person(s) or organizations.
  - B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any occurrence which takes place after the equipment lease expires.

Agreement No.: FACT 9017

Designated Member: Sumter County Board of County Commissioners

Countersigned by: \_\_\_\_\_

(Authorized Representative)

**THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ CAREFULLY.**

**ADDITIONAL INSURED ENDORSEMENT**  
**LESSORS/MANAGERS OF PREMISES**

This Endorsement modifies insurance provided under the following:

**GENERAL LIABILITY COVERAGE AGREEMENT**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective: October 1, 2012 12:01 A.M. standard time

**I. Schedule**

1. Identity of Additional Insured(s): **N/A COM**  
**7022 TPC Drive, Suite #500**  
**Orlando, FL 32822**
2. Interest of Additional Insured(s) Defined: **Communication Tower**
3. Location of Premises (Part Leased to You): **209 North Florida**  
**Bushnell, FL 33513**
4. Limit of Liability: Same as described in the General/Professional Liability section of the Declarations Page.

- II.** The Definitions section of the Agreement is amended as follows for this Endorsement: Member (Definitions: 23) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the Schedule.

Agreement No.: **FACT 9017**

Designated Member: **Sumter County Board of County Commissioners**

Countersigned by: \_\_\_\_\_

(Authorized Representative)

THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ CAREFULLY.

**ADDITIONAL INSURED ENDORSEMENT**  
**LESSORS/MANAGERS OF PREMISES**

This Endorsement modifies insurance provided under the following:

**GENERAL LIABILITY COVERAGE AGREEMENT**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective: October 1, 2012 12:01 A.M. standard time

I. Schedule

1. Identity of Additional Insured(s): **Sumter Landing Community  
Development District  
3231 Wedgewood Lane  
The Villages, FL 32162**
2. Interest of Additional Insured(s) Defined: **SLCDD facilities used to conduct  
public meetings and workshops**
3. Location of Premises (Part Leased to You):
4. Limit of Liability: Same as described in the General/Professional Liability section  
of the Declarations Page.

- II. The Definitions section of the Agreement is amended as follows for this Endorsement:  
Member (Definitions: 23) is amended to include as an insured the person or organization  
shown in the Schedule but only with respect to liability arising out of ownership, maintenance  
or use of that part of the premises leased to you and shown in the Schedule and subject to  
the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on  
behalf of the person or organization shown in the Schedule.

Agreement No.: FACT 9017

Designated Member: Sumter County Board of County Commissioners

Countersigned by: \_\_\_\_\_



(Authorized Representative)



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301 South Bronough Street, Suite 300 ♦ Post Office Box 1757 ♦ Tallahassee, FL 32302-1757  
(850) 222-9684 ♦ Fax (850) 222-3806 ♦ Website: [www.floridaleagueofcities.com](http://www.floridaleagueofcities.com)

## **Memorandum**

To: Whom It May Concern

From: Deborah Seymore, Human Resources Manager

Re: Compliance with State of Florida New Hire Registration Law

Date: October 19, 2012

### **State New Hire Registration Compliance Certification**

The Florida League of Cities, Inc. (League) hereby certifies that it is compliant with all state requirements related to new hire registration under §409.2576, Fla. Stat. and thereby satisfies the Federal E-Verify program.

President **Manny Maroño**, Mayor, Sweetwater  
First Vice President **P.C. Wu**, Councilman, Pensacola ♦ Second Vice President **Lori C. Moseley**, Mayor, Miramar  
Executive Director **Michael Sittig** ♦ General Counsel **Harry Morrison, Jr.**